IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.236 OF 2003
WITH
CIVIL APPLICATION NO.345 OF 2003

Vilas Shamrao Shedge ..Appellant

V/s.

Hanmant Vishnu Shedge & ors ..Respondents

Mr.P.B.Shah, advocate for the appellant
Mr.Pramod Pawar & R.R.Ahagaonkar, advocate for the respondent No.1

CORAM : B.H.MARLAPALLE, J.

DATE : 3RD APRIL, 2007

P.C.

1. This second appeal arises from the Judgment and Decree passed in Regular Civil Suit No.444 of 1987 by the learned II Joint Civil Judge, Senior Division, Satara on 21st March, 1991 and modified by the learned III Ad hoc Additional District Judge, Satara by Judgment and Decree dated 24th September, 2002 in Regular Civil Appeal No.227 of 1991. The appellant is the original defendant No.1 and though, Regular Civil Appeal No.227 of 1991 was filed by the original defendant Nos.1 to 3 & 9, defendant Nos.2, 3 & 9 have not challenged the

modified Decree passed by the lower appellate Court.

2. Bala Shedage, R/o.village Bharatgaon, Taluka and District Satara had four sons namely Dagadu, Vishnu, Baburao and Shamrao. Baburao died on 11th May, 1976 issueless. His two brothers, Vishnu and Shamrao were married and had children. Vishnu's son, Hanmant and wife, Yashodabai filed Regular Civil Suit No.444 of 1987 contending that the branch of Vishnu was entitled for ½ share in the property of Baburao and the remaining 1/3rd share would go to the defendants i.e.branch of Shamrao. The agricultural lands are located as under along with their respective areas :-

	Gat No.	Area H	R
1.	565	0	36
2.	98	0	52
3.	538	0	04
4.	287	0	55

The defendant Nos.1, 2 & 3 filed their Written Statement and contended that Bajirao had during his

life time sold his share in the suit property to them by the Sale Deed dated 24th September, 1970 (Property Nos.1, 3 & 4) for an amount of Rs.500/-. They further contended that Bajirao in his life time had also sold the agricultural land bearing Gat No.188 to the defendant No.2 by a Sale Deed dated 11th June, 1971. It was further pointed out that the earlier Gat Nos. were subsequently changed as under :-

	Old Gat No.	New Gat No.
1.	1169	565
2.	1130	538
3.	188	287
4.	92	98

The suit was therefore, opposed on the sole ground that before his demise on 11th May, 1976 he had sold the suit properties to the defendant No.2. The defendants had brought on record copies of the Sale Deeds.

3. On considering the evidence and pleadings

made by the respective parties, the trial Court held that the plaintiffs had successfully proved their right to get 1/3rd share in the suit properties (5 Ana 4 Pai) and they were therefore, entitled for partition in the suit properties. The trial Court further held that the defendants were unsuccessfully proving their purchase of the suit land in Gat Nos.565, 538 & 287.

4. There is no dispute between the parties that Baburao's wife had pre-deceased him and the couple did not have any issue. Regular Civil Suit No.387 of 1949 was filed for partition and it was compromised in terms of consent. Consequently, each of the three brothers share was put in possession as per the said compromise decree. It appears that on the demise of Baburao, defendant No.2 was shown in the record of rights of the suit properties as a Manager of joint family and the said entry was challenged by the plaintiffs but the entry was confirmed and therefore, an appeal was filed before the Prant officer. Consequently, names of both the plaintiffs were entered in the

record of rights.

5. The lower appellate Court on re-appreciating the evidence adduced before the trial Court held that the plaintiffs would be entitled for 1/3rd share together or 1/6th share each except in the land bearing Gat No.538. On all other points, the learned Judge of the lower appellate Court has agreed with the findings recorded by the trial Court. The appellant defendant No.1 is not satisfied with both the orders and claims that the suit filed by the plaintiffs be dismissed.

6. As of now, on the basis of the order passed by the Prant officer, the plaintiffs are in possession of 1/3rd share in the suit properties. The lower appellate Court on examination of the Sale Deed in respect of the land in Gat No.538 (Exh.No.31) dated 24th September, 1970 held that it was a genuine transaction and the land admeasuring 4R located in Gat No.538 was in fact sold by baburao to the defendant No.1. There was absolutely nothing on record to indicate that the

suit land is called as Paun Biga and its boundaries were nowhere shown. The sale transaction in respect of the agricultural land in Gat No.565 from the same Sale Deed at Exh.No.31 was therefore, not accepted. These reasons given by the lower appellate Court are in confirmity with the findings recorded by the trial Court. At the same time, it was also held that plaintiff Hanmant had 11 Gunthas of land which is located in Gat No.31 from the ownership of Baburao on 17th November, 1971. Under these circumstances the lower appellate Court held that except the land in Gat No.538, all other lands as directed by the trial Court were required to be partitioned so that the plaintiff could be put in possession of 1/3rd share (5 Ana 4 pai) in the property of Late Baburao i.e.Gat No.565, 98 & 287. These concurrent findings were recorded by both the Courts below on the assessment of oral as well as documentary evidence and they do not suffer from any perversities or illegalities.

7. However, the learned counsel for the defendant No.1 submitted that from Gat No.565 which

has a total area of 26R, of the suit properties, 1/3rd division would come to about 8R of land and therefore, he suggested that instead of dividing Gat No.568 parties may negotiate or agree on the division of Gat No.98 or 287 which admeasured 52R or 55R respectively so that the entire suit land in Gat No.565 would remain intact. The original plaintiffs have no objection and therefore, while partitioning the land it shall be kept in mind that the land in Gat No.565 would remain as one undivided piece and instead the plaintiff's 1/3rd share in the said land would be set off from the land located in either Gat No.98 or 287.

8. Both the learned counsel have taken instructions in this regard from their respective clients namely Madhu, son of the plaintiff No.1 & Deepak, son of the defendant No.1.

9. In the circumstances, there is no other substantial question of law that arises for consideration of this Court and therefore, the second appeal is dismissed by confirming the lower

appellate court's decree. At the same time, it is directed that while effecting partition, as agreed between the parties before me, the land in Gat No.565 admeasuring 26R would not be partitioned and 1/3rd share of the plaintiffs in the same land would be set off from the share of the defendants from the land in Gat No.98 or 287 as the case may be. Consequently, civil application does not survive and ad-interim order, if any, stands vacated.

(B.H.MARLAPALLE, J.)